

FOSTER PARENT RETALIATION

Background

In 2001, the state Legislature enacted a statute that provides foster parents with the **right to be free of coercion, discrimination, and reprisal in serving foster children**, including the right to voice grievances about services provided or not provided to a foster child. The law, however, did not specify the acts against which a foster parent was protected. Moreover, the statute did not provide foster parents with a remedy against the Department of Social and Health Services for retaliation.

The Legislature addressed the issue of retaliation more expansively in 2004, when it enacted RCW 74.13.333. This law establishes the clear right of foster parents to file a complaint with the Ombudsman if they believe they have been retaliated against. The new law sets forth specific protected actions. Specifically, RCW 74.13.333 provides that:

A foster parent who believes that a department employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

- (1) The foster parent made a complaint with the office of the family and children's ombudsman, the attorney general, law enforcement agencies, or the department, provided information, or otherwise cooperated with the investigation of such a complaint;
- (2) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;
- (3) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;
- (4) The foster parent has advocated for services on behalf of the foster child;
- (5) The foster parent has sought to adopt a foster child in the foster parent's care; or
- (6) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW,

may file a complaint with the office of the family and children's ombudsman. The office of the family and children's ombudsman shall include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombudsman shall identify trends which may indicate a need to improve relations between the department and foster parents.

Ombudsman Action

Development of Analytical Framework: The foster parent retaliation law does not explicitly define retaliation. Thus, the Ombudsman developed an analytical framework to analyze whether retaliation has occurred by looking for guidance in other contexts, such as the employment law arena. In analyzing an allegation of retaliation, the Ombudsman considers:

- 1) Was the foster parent engaged in protected activity;
- 2) Was the foster parent subjected to an adverse action by the Department; and
- 3) Is there is a causal connection between the adverse action and the protected activity?

The Ombudsman interprets “protected activity” to mean those activities set forth in RCW 74.13.333. The harm that a complainant is alleging is the “adverse action.” If the facts of the complaint establish that the adverse action occurred **prior to** the Department learning that the foster parent engaged in protected activity, then the action of the Department would not meet the Ombudsman’s threshold criteria to find retaliation. If, on the other hand, the adverse action occurred **after** the foster parent engaged in protected activity, then further investigation is warranted.

This analytical framework was presented to foster parents attending the 2004 Foster Parent Association of Washington State conference. The Ombudsman elicited input and feedback on the framework and demonstrated how it would be applied to various fact patterns.

Ensuring Compliance by the Department with the Retaliation Law: The Department proposed revisions to the Children’s Administration Practice and Procedure Manual to bring the agency’s procedures into compliance with the foster parent retaliation law.¹ The Ombudsman suggested revisions of the proposed changes to ensure that the section on Complaint Resolution specifically addressed 1) the right of foster parents to contact OFCO if they have a complaint and 2) the required response of Children’s Administration if the agency is contacted by OFCO regarding retaliation. These revisions are pending.

Foster Parent Rights in Other States: The Ombudsman also researched foster parent rights established in other states. Washington is one of only a handful of states that provide protection against retaliation or reprisal.² We are frequently asked if the retaliation law specifically provides for a legal cause of action against DSHS for retaliation. At this time, it does not, which is consistent with other states’ laws.

Nature of Retaliation Complaints

Retaliation complaints, by their nature, are complex and nuanced. More than with other types of complaints, the events leading to this type of complaint are prone to dramatically conflicting interpretations by the parties involved. The adverse action alleged may be apparent, such as the agency’s decision to remove a particular foster child without sufficient cause or to clearly restrict the parameters of the foster license so that the capacity of children is reduced or the age of children served is narrowed. Other times, the adverse action is more subtle such as when the agency stops placing children with a foster parent, even though the foster parent has the capacity and inclination to foster more children.

¹ RCW 74.13.334 requires the department to develop procedures for responding to recommendations of OFCO as a result of complaints filed by foster parents under the retaliation law, RCW 74.13.333.

² Alabama, Illinois, Missouri, Oklahoma, and Tennessee are other states that have laws that address retaliation.

The Ombudsman works carefully to fairly determine if there is a retaliatory motive behind the actions of the Department. There may be situations where an allegation does not meet the criteria to qualify as retaliation, but the agency action still constitutes a violation of law, policy, or procedure. Under these circumstances, if the situation involves a current action, the Ombudsman will intervene to seek corrective action.

Examples of Differing Perspectives

The following scenarios, which are derived from composites created from actual factual circumstances investigated by the Ombudsman, provide examples of the challenge in fairly assessing a retaliation claim:

Foster parent: “I am receiving less money each month for my foster youth ever since I strongly advocated for services for him. I am being punished for being the squeaky wheel.”

DCFS: “The youth has made significant progress while in placement, is not demonstrating the same behaviors, and does not require as much supervision. Therefore, the foster parent should be compensated at a lesser rate.”

Foster parent: “They removed the foster child because I complained about the case plan and advocated for the child.”

DCFS: “We removed the foster child because the foster parent was not cooperative with the case plan and was a barrier to reunifying the child with the parents.”

Foster parent: “The agency will not place any more children in my home because I have been critical of the caseworker who is not competent.”

DCFS: “There have been no limitations imposed on this foster parent’s license. She does better with small children and we have not had any children that meet this profile who need placement currently.”

Foster parent: “They retaliated against me by making a licensing complaint that was not valid.”

DCFS: “Our case workers are mandated reporters and have an obligation to report complaints of all licensing violations. It is up to the DLR/CPS worker to then determine if the complaint is valid. We cannot determine the validity of a complaint until an investigation has been done.”

Community Outreach to Foster Parents: The Ombudsman has met with several foster parent groups over the past two years. Some of these groups are formally organized entities such as Foster Parents of Washington. Others we have met, only by agreeing to maintain their anonymity, as they fear reprisal by DCFS employees. The following is a summary of concerns that have been expressed to the Ombudsman by foster parents in the course of our meetings:

- 1) Children are routinely placed in homes without the agency implementing a safety plan for children who present special challenges, e.g. a history of being sexually abused. This undermines the placement because adequate monitoring and other safeguards are not put in place.
- 2) Communication by the DCFS is inaccurate, and at worst, intentionally misleading. Different stakeholders are given conflicting information. This promotes misunderstanding and suspicion.
- 3) The Department separates foster parents from guardians ad litem, parents, and caseworkers, which promotes suspicion and misunderstanding.

- 4) There is a lack of accountability for caseworkers. There are no consequences for chronic dereliction of duties or intimidation by caseworkers.
- 5) There are inaccuracies in written documentation and no opportunity for foster parents to correct the record at or near the time the record is made. There are inaccuracies in the service episode records, home studies, Individual Service Plans.
- 6) Foster parents are not provided a copy of completed home studies of themselves when they are pursuing adoption of a child.
- 7) DLR/CPS investigations of foster parents are not completed on a timely basis, and, in some instances, never completed.
- 8) Removal of children is unnecessarily traumatic and inhumane: minimal notice; lack of informed communication about basis for removal; lack of basic information to child about what is occurring; failure to return phone calls of foster parents about what to expect even when a child has been in their home for 1 ½ to 2 years.
- 9) Foster parents are not informed on a timely basis that they are under investigation by DLR/CPS. Sometimes notice is not given at all or is significantly delayed (e.g. a year after the alleged incident occurred) and then notice is communicated casually in the context of the caseworker giving other information to the foster parent.
- 10) In cases where a foster parent has been investigated and the complaint is invalid or the referral is unfounded, the DCFS continues to treat the foster parent as though they are guilty of the allegations. Consequences have included failure of the agency to return children removed and failure to place additional children in the home.
- 11) Foster parents are required to submit to expensive and intrusive psychological evaluations. Foster parents state they are “scared off” by not being able to afford to do the evaluation or, even after submitting and paying, if the recommendations are positive, DCFS disregards them.
- 12) Foster parents do not have legal representation to inform them of their rights or provide a means to challenge DCFS assertions. DCFS automatically “wins” through intimidation and by having the advantage of legal representation.
- 13) Many regions do not presently have a foster parent liaison.
- 14) Foster parents do not receive placement papers or documentation for children when they are placed. Consequently, they are uninformed or misinformed about behavioral problems, developmental challenges, placement history and other things that they could prepare for which could help stabilize the placement.
- 15) Foster parents are forced to comply with visitations for children in their care that are detrimental to the well being of the foster child.
- 16) DCFS does not provide foster parents with a write-up of findings/observations from a 90-day health and safety check.